

1-1 By: Burton S.B. No. 13
 1-2 (In the Senate - Filed July 14, 2017; July 20, 2017, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 July 24, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 3; July 24, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15		X		
1-16		X		
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 13 By: Campbell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the issuance of a permit by a political subdivision.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. Section 214.904, Local Government Code, is
 1-24 amended to read as follows:
 1-25 Sec. 214.904. PROCEDURES AND PERIOD [TIME] FOR APPROVAL OR
 1-26 DENIAL [ISSUANCE] OF MUNICIPAL BUILDING PERMIT APPLICATIONS;
 1-27 PROHIBITED PERMIT REQUIREMENTS. (a) This section applies [only]
 1-28 to any [a] permit required by a municipality to construct [erect] or
 1-29 improve a building or other structure in the municipality or its
 1-30 extraterritorial jurisdiction.
 1-31 (b) Not later than the 30th [45th] day after the date an
 1-32 application for a permit is submitted, the municipality must:
 1-33 (1) grant or make a preliminary determination to deny
 1-34 the permit;
 1-35 (2) provide written notice to the applicant stating
 1-36 the reasons why the municipality has been unable to act on [grant or
 1-37 deny] the permit application; or
 1-38 (3) reach a written agreement with the applicant
 1-39 providing for a deadline not later than the 120th day after the date
 1-40 the application was submitted for granting or denying the permit.
 1-41 (c) For a permit application for which notice is provided
 1-42 under Subsection (b)(2), the municipality must grant or make a
 1-43 preliminary determination to deny the permit not later than the
 1-44 15th [30th] day after the date the notice is received. A
 1-45 municipality may not extend the period for the municipality to act
 1-46 on an application under this subsection more than once.
 1-47 (d) If a municipality fails to act on [grant or deny] a
 1-48 permit application within [in] the period [time] required by
 1-49 Subsection (c) or by an agreement under Subsection (b)(3), the
 1-50 permit application is considered approved and the municipality:
 1-51 (1) may not collect any permit fees associated with
 1-52 the application; [and]
 1-53 (2) shall refund to the applicant any permit fees
 1-54 associated with the application that have been collected; and
 1-55 (3) shall issue the permit.
 1-56 (e) If a municipality makes a preliminary determination to
 1-57 deny a permit application, the municipality must send written
 1-58 notice of the determination to the applicant not later than the
 1-59 first business day after the date the determination is made
 1-60 stating:

2-1 (1) each deficiency that is a reason for the
 2-2 determination, including a citation to the specific ordinance,
 2-3 order, regulation, or policy relevant to the determination;

2-4 (2) the specific actions required by the applicant to
 2-5 remedy each specified deficiency; and

2-6 (3) a deadline not earlier than the 30th day after the
 2-7 date the notice is sent for the applicant to complete the remedial
 2-8 actions specified in the notice before the denial becomes final.

2-9 (f) If an applicant substantially completes the remedial
 2-10 actions specified in the notice under Subsection (e) within the
 2-11 period required, the applicant may request reconsideration of the
 2-12 determination. The municipality shall grant the permit if the
 2-13 municipality determines the applicant has substantially completed
 2-14 the specified remedial actions. Not later than the 15th day after
 2-15 the date the applicant's request for reconsideration is received,
 2-16 the municipality shall send the applicant written notice of a final
 2-17 determination to grant or deny a permit application. If the
 2-18 municipality fails to send notice of a final determination within
 2-19 the period required by this subsection, the permit application is
 2-20 considered approved and the municipality shall issue the permit.

2-21 (g) Written notice of the municipality's final
 2-22 determination that a permit is denied must include the information
 2-23 required by Subsections (e)(1) and (2) in addition to written
 2-24 findings of the reasons the municipality determined that any
 2-25 remedial actions taken by the applicant were insufficient to
 2-26 correct the deficiencies specified in the notice provided under
 2-27 Subsection (e).

2-28 (h) Any final determination that a permit is denied may not
 2-29 be based on:

2-30 (1) a reason or remedial requirement that was not
 2-31 previously disclosed to the applicant in the notice required under
 2-32 Subsection (e); or

2-33 (2) a requirement for the applicant to comply with any
 2-34 ordinance, order, regulation, or policy that is not substantially
 2-35 related to the construction or improvement of a building or other
 2-36 structure.

2-37 (i) A municipality may not adopt or enforce an ordinance,
 2-38 order, regulation, or policy relating to granting or denying a
 2-39 permit that:

2-40 (1) restricts or prohibits the right of an applicant
 2-41 to reapply for a permit to construct or improve the same building or
 2-42 other structure that was the subject of a denied permit
 2-43 application;

2-44 (2) requires a private employer to offer wages higher
 2-45 than the wages required under Chapter 62, Labor Code; or

2-46 (3) authorizes on-site monitoring of a private
 2-47 employer by a nongovernmental entity.

2-48 (j) The right of a permit applicant to the issuance of a
 2-49 determination or a permit as required by this section may be
 2-50 enforced only through mandamus or declaratory or injunctive relief.
 2-51 A municipality's immunity from suit is waived in regard to an action
 2-52 under this section.

2-53 SECTION 2. Section 233.901, Local Government Code, is
 2-54 amended to read as follows:

2-55 Sec. 233.901. PROCEDURES AND PERIOD [TIME] FOR APPROVAL OR
 2-56 DENIAL [ISSUANCE] OF COUNTY BUILDING PERMIT APPLICATIONS;
 2-57 PROHIBITED PERMIT REQUIREMENTS. (a) This section applies [only]
 2-58 to any [a] permit required by a county for an activity relating to
 2-59 the construction or improvement of [with a population of 3.3
 2-60 million or more to construct or improve] a building or other
 2-61 structure in the county, but does not apply to a permit for an
 2-62 on-site sewage disposal system.

2-63 (b) Not later than the 30th [45th] day after the date an
 2-64 application for a permit is submitted, the county must:

2-65 (1) grant or make a preliminary determination to deny
 2-66 the permit;

2-67 (2) provide written notice to the applicant stating
 2-68 the reasons why the county has been unable to act on the permit
 2-69 application; or

3-1 (3) reach a written agreement with the applicant
3-2 providing for a deadline not later than the 120th day after the date
3-3 the application was submitted for granting or denying the permit.

3-4 (c) For a permit application for which notice is provided
3-5 under Subsection (b)(2), the county must grant or make a
3-6 preliminary determination to deny the permit not later than the
3-7 15th [30th] day after the date the notice is received. A county may
3-8 not extend the period for the county to act on an application under
3-9 this subsection more than once.

3-10 (d) If a county fails to act on a permit application within
3-11 [in] the period [time] required by Subsection (c) or by an agreement
3-12 under Subsection (b)(3), the permit application is considered
3-13 approved and the county:

3-14 (1) may not collect any permit fees associated with
3-15 the application; ~~and~~

3-16 (2) shall refund to the applicant any permit fees
3-17 associated with the application that have been collected; and

3-18 (3) shall issue the permit.

3-19 (e) If a county makes a preliminary determination to deny a
3-20 permit application, the county must send written notice of the
3-21 determination to the applicant not later than the first business
3-22 day after the date the determination is made stating:

3-23 (1) each deficiency that is a reason for the
3-24 determination, including a citation to the specific ordinance,
3-25 order, regulation, or policy relevant to the determination;

3-26 (2) the specific actions required by the applicant to
3-27 remedy each specified deficiency; and

3-28 (3) a deadline not earlier than the 30th day after the
3-29 date the notice is sent for the applicant to complete the remedial
3-30 actions specified in the notice before the denial becomes final.

3-31 (f) If an applicant substantially completes the remedial
3-32 actions specified in the notice under Subsection (e) within the
3-33 period required, the applicant may request reconsideration of the
3-34 determination. The county shall grant the permit if the county
3-35 determines the applicant has substantially completed the specified
3-36 remedial actions. Not later than the 15th day after the date the
3-37 applicant's request for reconsideration is received, the county
3-38 shall send the applicant written notice of a final determination to
3-39 grant or deny a permit application. If the county fails to send
3-40 notice of a final determination within the period required by this
3-41 subsection, the permit application is considered approved and the
3-42 county shall issue the permit.

3-43 (g) Written notice of the county's final determination that
3-44 a permit is denied must include the information required by
3-45 Subsections (e)(1) and (2) in addition to written findings of the
3-46 reasons the county determined that any remedial actions taken by
3-47 the applicant were insufficient to correct the deficiencies
3-48 specified in the notice provided under Subsection (e).

3-49 (h) Any final determination that a permit is denied may not
3-50 be based on:

3-51 (1) a reason or remedial requirement that was not
3-52 previously disclosed to the applicant in the notice required under
3-53 Subsection (e); or

3-54 (2) a requirement for the applicant to comply with any
3-55 ordinance, order, regulation, or policy that is not substantially
3-56 related to the activity for which the permit is required.

3-57 (i) A county may not adopt or enforce an ordinance, order,
3-58 regulation, or policy relating to granting or denying a permit
3-59 that:

3-60 (1) restricts or prohibits the right of an applicant
3-61 to reapply for a permit to construct or improve the same building or
3-62 other structure that was the subject of a denied permit
3-63 application;

3-64 (2) requires a private employer to offer wages higher
3-65 than the wages required under Chapter 62, Labor Code; or

3-66 (3) authorizes on-site monitoring of a private
3-67 employer by a nongovernmental entity.

3-68 (j) The right of a permit applicant to the issuance of a
3-69 determination or a permit as required by this section may be

4-1 enforced only through mandamus or declaratory or injunctive relief.
4-2 A county's immunity from suit is waived in regard to an action under
4-3 this section.

4-4 (k) Nothing in this section shall be construed to authorize
4-5 a county to require a permit to undertake an activity relating to
4-6 the construction or improvement of a building or other structure in
4-7 the county.

4-8 SECTION 3. Sections 245.001(1) and (3), Local Government
4-9 Code, are amended to read as follows:

4-10 (1) "Permit" means a license, certificate, approval,
4-11 registration, consent, permit, contract or other agreement for
4-12 construction related to, or provision of, service from a water or
4-13 wastewater utility owned, operated, or controlled by a regulatory
4-14 agency, or other form of authorization required by law, rule,
4-15 regulation, order, or ordinance that a person must obtain to
4-16 perform an action, including engaging in an occupation, or
4-17 initiate, continue, or complete a project for which the permit is
4-18 sought.

4-19 (3) "Project" means an endeavor, occupation, or
4-20 activity over which a regulatory agency exerts its jurisdiction and
4-21 for which one or more permits are required to initiate, continue,
4-22 engage in, or complete the endeavor, occupation, or activity.

4-23 SECTION 4. Section 245.002, Local Government Code, is
4-24 amended by amending Subsections (a-1) and (e) and adding
4-25 Subsections (e-1) and (f-1) to read as follows:

4-26 (a-1) Rights to which a permit applicant is entitled under
4-27 this chapter accrue on the filing of an original application or plan
4-28 for development or plat application that gives the regulatory
4-29 agency fair notice of the project and the nature of the permit
4-30 sought. An application or plan is considered filed on the date the
4-31 applicant delivers the application or plan to the regulatory
4-32 agency, ~~or~~ deposits the application or plan with the United
4-33 States Postal Service by certified mail addressed to the regulatory
4-34 agency, or submits the application electronically if the regulatory
4-35 agency accepts applications electronically by a method that
4-36 provides confirmation of receipt. A certified mail receipt or
4-37 other confirmation or receipt obtained by the applicant at the time
4-38 of deposit or submission is prima facie evidence of the date the
4-39 application or plan was filed ~~[deposited with the United States~~
4-40 ~~Postal Service].~~

4-41 (e) A regulatory agency may provide that a permit
4-42 application expires on or after the 61st ~~[45th]~~ day after the date
4-43 the application is filed if:

4-44 (1) the applicant fails to provide documents or other
4-45 information necessary to comply with the agency's technical
4-46 requirements relating to the form and content of the permit
4-47 application;

4-48 (2) the agency provides to the applicant not later
4-49 than the 10th business day after the date the application is filed
4-50 written notice of the failure that specifies the necessary
4-51 documents or other information required to complete the application
4-52 and the date the application will expire if the documents or other
4-53 information is not provided; and

4-54 (3) the applicant fails to provide the specified
4-55 documents or other information within the period ~~[time]~~ provided in
4-56 the notice.

4-57 (e-1) A permit application may not expire before the 11th
4-58 business day after the date the regulatory agency provides the
4-59 applicant with the notice described by Subsection (e)(2).

4-60 (f-1) A regulatory agency may not deny a permit application
4-61 based on a requirement for the applicant to comply with any
4-62 ordinance, order, regulation, or policy that is not substantially
4-63 related to the purposes for which the permit is required.

4-64 SECTION 5. Section 245.004, Local Government Code, is
4-65 amended to read as follows:

4-66 Sec. 245.004. EXEMPTIONS. This chapter does not apply to:

4-67 (1) a permit that is at least two years old, is issued
4-68 for the construction of a building or structure intended for human
4-69 occupancy or habitation, and is issued under laws, ordinances,

5-1 procedures, rules, or regulations adopting only:

5-2 (A) uniform building, fire, electrical,

5-3 plumbing, or mechanical codes adopted by a recognized national code

5-4 organization; or

5-5 (B) local amendments to those codes enacted

5-6 solely to address imminent threats of destruction of property or

5-7 injury to persons;

5-8 (2) municipal zoning regulations that do not affect

5-9 landscaping or tree preservation, open space or park dedication,

5-10 property classification, lot size, lot dimensions, lot coverage, or

5-11 building size or that do not change development permitted by a

5-12 restrictive covenant required by a municipality;

5-13 ~~(3) [regulations that specifically control only the~~

5-14 ~~use of land in a municipality that does not have zoning and that do~~

5-15 ~~not affect landscaping or tree preservation, open space or park~~

5-16 ~~dedication, lot size, lot dimensions, lot coverage, or building~~

5-17 ~~size;~~

5-18 ~~[(4)]~~ regulations for sexually oriented businesses as

5-19 defined by Section 243.002, massage parlors as defined by Section

5-20 234.101, or game rooms as defined by Section 234.131;

5-21 ~~(4) [(5)]~~ municipal or county ordinances, rules,

5-22 regulations, or other requirements affecting colonias;

5-23 ~~(5) [(6)]~~ fees imposed in conjunction with

5-24 development permits;

5-25 ~~(6) [(7)]~~ regulations for annexation that do not

5-26 affect landscaping or tree preservation or open space or park

5-27 dedication;

5-28 ~~(7) [(8)] regulations for utility connections;~~

5-29 ~~[(9)]~~ regulations to prevent imminent destruction of

5-30 property or injury to persons from flooding that are effective only

5-31 within a flood plain established by a federal flood control program

5-32 and enacted to prevent the flooding of buildings intended for

5-33 public occupancy;

5-34 ~~(8) [(10)]~~ construction standards for public works

5-35 located on public lands or easements; or

5-36 ~~(9) [(11)]~~ regulations to prevent the imminent

5-37 destruction of property or injury to persons if the regulations do

5-38 not:

5-39 (A) affect landscaping or tree preservation,

5-40 open space or park dedication, lot size, lot dimensions, lot

5-41 coverage, building size, residential or commercial density, or the

5-42 timing of a project; or

5-43 (B) change development permitted by a

5-44 restrictive covenant required by a municipality.

5-45 SECTION 6. Chapter 245, Local Government Code, is amended

5-46 by adding Sections 245.008 and 245.009 to read as follows:

5-47 Sec. 245.008. PROCEDURES AND PERIOD FOR APPROVAL OR DENIAL

5-48 OF PERMIT APPLICATIONS; PROHIBITED PERMIT REQUIREMENTS.

5-49 (a) Except as provided by Section 214.904, 233.901, or other law

5-50 that provides for a shorter period, a regulatory agency shall

5-51 approve or make a preliminary determination to deny an application

5-52 for a permit not later than the 60th business day after the date the

5-53 regulatory agency received the completed application.

5-54 (b) A regulatory agency may extend the period under

5-55 Subsection (a) for approving or making a preliminary determination

5-56 to deny an application by an additional 10 business days if the

5-57 regulatory agency provides written notice of the extension to the

5-58 applicant during that period stating the reasons the regulatory

5-59 agency has been unable to grant or make a preliminary determination

5-60 to deny the permit application during that period. A regulatory

5-61 agency may not extend the period for the regulatory agency to act on

5-62 an application under this subsection more than once.

5-63 (c) If a regulatory agency fails to act on a completed

5-64 application within the period required by this section, the

5-65 application is considered to be approved and the regulatory agency

5-66 shall issue the permit.

5-67 (d) If a regulatory agency makes a preliminary

5-68 determination to deny a permit application, the regulatory agency

5-69 must send written notice of the determination to the applicant not

6-1 later than the first business day after the date of the
6-2 determination stating:

6-3 (1) each deficiency that is a reason for the
6-4 determination, including a citation to the specific ordinance,
6-5 order, regulation, or policy relevant to the determination;

6-6 (2) the specific actions required by the applicant to
6-7 remedy each specified deficiency; and

6-8 (3) a deadline not earlier than the 30th day after the
6-9 date the notice is sent for the applicant to complete the remedial
6-10 actions specified in the notice before the denial becomes final.

6-11 (e) If an applicant substantially completes the remedial
6-12 actions specified in the notice under Subsection (d) within the
6-13 period required, the applicant may request reconsideration of the
6-14 determination. The regulatory agency shall grant the permit if the
6-15 regulatory agency determines the applicant has substantially
6-16 completed the specified remedial actions. Not later than the 15th
6-17 day after the date the applicant's request for reconsideration is
6-18 received, the regulatory agency shall send the applicant written
6-19 notice of a final determination to grant or deny a permit
6-20 application. If the regulatory agency fails to send notice of a
6-21 final determination within the period required by this subsection,
6-22 the permit application is considered approved and the regulatory
6-23 agency shall issue the permit.

6-24 (f) Written notice of the regulatory agency's final
6-25 determination that a permit is denied must include the information
6-26 required by Subsections (d)(1) and (2) in addition to written
6-27 findings of the reasons the regulatory agency determined that any
6-28 remedial actions taken by the applicant were insufficient to
6-29 correct the deficiencies specified in the notice provided under
6-30 Subsection (d).

6-31 (g) Any final determination that a permit is denied may not
6-32 be based on:

6-33 (1) a reason or remedial requirement that was not
6-34 previously disclosed to the applicant in the notice required under
6-35 Subsection (d); or

6-36 (2) a requirement for the applicant to comply with any
6-37 ordinance, order, regulation, or policy that is not substantially
6-38 related to the project for which a permit is required.

6-39 Sec. 245.009. EXPEDITED PERMITTING PROCEDURES. (a) This
6-40 title does not prohibit a political subdivision from adopting
6-41 procedures to provide a shorter period than provided by law for the
6-42 approval of a permit.

6-43 (b) Any ordinance, order, regulation, or policy providing
6-44 procedures for the expedited approval of a permit must comply with
6-45 the requirements of this chapter.

6-46 (c) A procedure authorized by this section may not:

6-47 (1) restrict or prohibit the right of an applicant to
6-48 reapply for a permit that was the subject of a denied permit
6-49 application;

6-50 (2) require a private employer to offer wages higher
6-51 than the wages required under Chapter 62, Labor Code;

6-52 (3) authorize on-site monitoring of a private employer
6-53 by a nongovernmental entity; or

6-54 (4) require an applicant for an expedited permit to
6-55 comply with an ordinance, order, regulation, or policy that is not
6-56 substantially related to the purposes for which the permit is
6-57 required.

6-58 SECTION 7. Section 245.002(g), Local Government Code, is
6-59 repealed.

6-60 SECTION 8. The changes in law made by this Act apply only to
6-61 a permit application filed on or after the effective date of this
6-62 Act. An application filed before the effective date of this Act is
6-63 governed by the law in effect immediately before the effective date
6-64 of this Act, and the former law is continued in effect for that
6-65 purpose.

6-66 SECTION 9. This Act takes effect immediately if it receives
6-67 a vote of two-thirds of all the members elected to each house, as
6-68 provided by Section 39, Article III, Texas Constitution. If this
6-69 Act does not receive the vote necessary for immediate effect, this

7-1 Act takes effect December 1, 2017.

7-2 * * * * *